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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-772

PEOPLE OF THE STATE OF CALIFORNIA; THE JUSTICE COURT OF YUBA CITY, SUTTER COUNTY, CALIFORNIA; JUDGE CLAUDE J. MILLER, YUBA CITY JUSTICE COURT; THE JUSTICE COURT OF GROVER CITY, SAN LUIS OBISPO COUNTY, CALIFORNIA; JUDGE G. S. DANA, Grover City Justice Court; and all Justice Courts similarly situated within the State of California; THE JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA; RALPH KLEPS, Administrative Director of the Judicial Council, State of California; STATE OF CALIFORNIA,
Petitioners,

vs.

LEWIS GORDON, SANTIAGO ARGUIJO, individually and on behalf of all other persons similarly situated,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the California Justice Court System, which compels criminal defendants to appear before untrained non-attorney judges, denies the accused the right to a fair trial and due process of law.

2. Whether this case presents a case or controversy as required by Article III of the United States Constitution.

3. Whether an adequate state ground exists for the decision of the court below thereby making review by this Court unnecessary.

STATEMENT OF THE CASE

A. The proceedings below

Respondent Lewis Gordon was arrested after he and several other blacks gathered in front of the sheriff's office of Sutter County to protest the arrest of a friend. He was charged with disturbing the peace and failure to disperse. His defenses included a showing that his conduct was within his constitutionally protected freedom to assemble, and whether his alleged violation of California Penal Code §415 by "using vulgar, profane and indecent language within the presence or hearing of women or children" was speech protected by the First Amendment. *Cf. Bachellar v. Maryland,* 397 U.S. 564 (1970); *Edwards v. South Carolina,* 372 U.S. 229 (1963); *In re Bushman,* 1 Cal. 3d 767, 83 Cal. Rptr. 375, 463 P.2d 726 (1970). Santiago Arguijo, a Mexican-American, was arrested for driving under the influence of alcohol. He intended to challenge the lack of probable cause for the arrest and constitutional infirmities in the administration

of an alcohol analysis test. Both were to be tried in Justice Courts with non-attorney judges. Neither judge had ever demonstrated any prior knowledge, training or experience in deciding the legal issues involved.

This action was commenced in the Superior Court for the County of Sacramento on March 25, 1971 to prevent the prosecution of Lewis Gordon and Santiago Arguijo before non-attorney judges. The action was brought individually and on behalf of all other persons similarly situated. Pursuant to a general demurrer, the action was dismissed and an appeal was subsequently taken to the Court of Appeal. An application for a stay pending appeal was denied and the criminal proceedings against Gordon and Arguijo were concluded prior to the decision on appeal after each of them were assigned attorney judges and pleaded guilty to lesser offenses. Without reaching the class action question, the Court of Appeal held the case was not moot because of the broad public interest involved. Although the court recognized that "perils of amateurism" can indeed exist, it held the California Justice Court scheme constitutional. *(See* Appendix C-42 of petition for certiorari.) A petition for hearing was granted by the California Supreme Court and, in an unanimous opinion written by Acting Chief Justice Burke, the Court decided that, in the absence of a waiver, the California "practice of allowing non-attorney judges to preside over criminal trials of offenses punishable by a jail sentence, as is the situation in over sixty percent of the justice courts in California, violates the constitutional

rights of the defendants in those proceedings." *Gordon et al. v. The Justice Court for the Judicial District of Sutter et al.*, 12 Cal. 3d 323, 325-326, 15 Cal. Rptr. 632, 633 (1974). The effective date of the decision was postponed to February 1, 1975, to avoid disruption of the judicial system.

On September 27, 1974, legislation was enacted to provide circuit justice court judges with a minimum of five years of prior membership in the bar. California Government Code § 71700 *et seq.* reprinted as Appendix G to petition for certiorari. The effective date of the legislation was set as "January 7, 1975, or on the date that the decision in Gordon v. Justice Court (Sac. 7995) is final for all purposes, including any review by the United States Supreme Court, whichever is later." *Id.* Appendix G-104.

B. The California Justice Court System

The California Justice Court System was the product of a political compromise adopted by the California Legislature in 1952 to gain acceptance of a comprehensive reorganization of the lower courts. As a result of that compromise, lower court jurisdiction was vested solely in county courts and part-time non-attorney judges were eliminated in all judicial districts except those with a population under 40,000.[1] Cal. Const. Art. VI Section 5. The authority for establishing the boundaries of the judicial districts, the salaries of the justice court personnel, and the loca-

[1]Lower courts in judicial districts with a population of 40,000 or over were called Municipal Courts. Courts in judicial districts with a population under 40,000 were called Justice Courts. All Municipal Court judges must have been members of the bar for five years.

tion and quality of the justice court facilities was vested solely in the county board of supervisors.

Significantly the reorganization plan was adopted prior to the revolution in criminal law that has occurred since the decision of this Court in *Mapp v. Ohio,* 367 U.S. 643 (1961). It was also adopted prior to the unprecedented migration and population explosion that has increased membership in the California State Bar from 20,000 in 1950 to approximately 36,000 members in 1970,[2] and that doubled the population of the state from 10 million persons in 1952 to 20 million persons in 1970. In California today, all but four of the fifty-two county bar associations currently reporting, have ten or more practicing attorneys.[3] Of the 226 justice courts, two thirds (151) are located within 20 miles of a county seat or population center and 40 percent (96) are located either in a county seat or in a population center.[4] Only seven percent (16) of all justice courts are located more than 60 miles—an hour's drive—from a county seat or population center.[5] Notwithstanding these facts, 70% or 156 of the 244 existing justice court judgeships are still held by non-attorney judges[6] and justice

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[2]Division of Records, State Bar of California, San Francisco.

[3]See analysis of the number of attorneys in each county bar association provided by the State Bar of California, Appendix "A", petitioners' closing brief in Court of Appeal.

[4]A population center is defined as a city having a population of 5,000 or more. California Evidence Code § 415 (f); People v. Hosney, 204 Cal. App. 2d 584, 22 Cal. Rptr. 397 (1962).

[5]See Appendix B, petitioners' closing brief in Court of Appeal.

[6]In 1972, 37% of the lay judges had not gone beyond high school, and at least 13 judges had not completed high school. (Hennessy, *Qualification of California Justice Court Judges: A Dual System,* 3 Pac.L.J. 439, 445-446).

court boundaries, salaries and facilities still reflect local political interests.[7]

ARGUMENT

I

THE CALIFORNIA SUPREME COURT WAS CORRECT IN HOLDING THAT THE CALIFORNIA JUSTICE COURT SYSTEM CONTAINS A REASONABLE LIKELIHOOD THAT A FAIR TRIAL CANNOT BE OBTAINED AND THEREFORE DENIES CRIMINAL DEFENDANTS DUE PROCESS OF LAW.

With the foregoing facts and circumstances before them, the court below premised its decision on the "vast increase in the number of attorneys in all areas of the state and substantial improvements in roads, highways and transportation";[8] the "increased complexity of criminal law and criminal procedure";[9] the "far less rigorous" examination required of non-attorney justice court judges;[10] the "absence of any requirement of college or law school education in order to qualify as a justice court judge";[11] the many "difcult legal problems" a judge may encounter including

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[7]Such highly urbanized counties as Alameda, Los Angeles, San Diego, Sacramento and Fresno all have justice courts as a result of the size of the judicial districts created by the boards of supervisors. As noted in Booz, Allen & Hamilton Inc., CALIFORNIA LOWER COURT STUDY at 24:

> Since districting decisions are delegated by law, to county boards of supervisors the number of courts, their locations and district boundaries are determined by 58 different governing bodies. *In addition, decisions in this area often are subject to a variety of local political pressures which bear no relationship to the merits of proposed judicial district consolidations or boundary realignments.* [emphasis added]

[8]Gordon et al. v. The Justice Court for the Judicial District of Sutter et al., 12 Cal. 3d 323, ____, 115 Cal. Rptr. 632, 635 (1974).

[9]*Id.*

[10]*Id.* at ____, 115 Cal. Rptr. at 636.

[11]*Id.*

those raised by Gordon and Arguijo[12] as well as those involved in "presiding over jury trials," "the acceptance of guilty pleas," and making "proper sentencing decisions";[13] the inadequacies of appeal especially in the absence of a written transcript of the original proceedings;[14] the "fundamental right to counsel"[15] (Cal. Const., Art. I, § 13; *See Argersinger v. Hamlin*, 407 U.S. 25 (1972); *In re Smiley*, 66 Cal. 2d 606, 58 Cal. Rptr. 579, 427 P. 2d 179 (1967); *In re Johnson*, 62 Cal. 2d 325, 42 Cal. Rptr. 228, 398 P. 2d 420 (1965)) and the defendant's "fundamental right to a fair trial."[16]

The court's decision was based upon undisputed facts which were subject to judicial notice and within the court's general knowledge and expertise. As indicated below,[17] they were facts and circumstances peculiar to California which are *not* "presumably" present in the other "35 states" in which non-attorney judges are permitted. Petition for certiorari at 14.

The findings of the California Supreme Court—that there exists a reasonable likelihood that an accused compelled to stand trial before an untrained California lay judge would be subject to a loss of liberty without a fair trial, as well as that the right to counsel must necessarily include the right to "a judge qualified to comprehend and utilize counsel's

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[12] *Id.* at ____, 115 Cal. Rptr. at 637.

[13] *Id.*

[14] *Id.* at ____, 115 Cal. Rptr. at 637-638.

[15] *Id.*

[16] *Id.* at ____, 115 Cal. Rptr. at 635.

[17] *See* Section II, *infra*.

legal arguments," *Gordon, supra,* 12 Cal. 3d at ....., 15 Cal. Rptr. at 638,—are both grounded in well-settled legal principles as set forth in that court's own decisions, *Maine v. Superior Court,* 68 Cal. 2d 375, 66 Cal. Rptr. 724, 438 P. 2d 372 (1968) [right to a fair trial]; *Frazier v. Superior Court,* 5 Cal. 3d 287, 95 Cal. Rptr. 798, 486 P.2d 694 (1971); *In re Johnson,* 62 Cal. 2d 325, 42 Cal. Rptr. 228, 398 P. 2d 420 (1965) [right to counsel], and the decisions of this Court. *Ward v. Village of Monroeville,* 409 U.S. 57 (1972) [trial of traffic offender before mayor of town which was heavily dependent on traffic fines creates such a reasonable likelihood]; *Peters v. Kiff,* 407 U.S. 493 (1972) [Grand and/or petit jury selection system which arbitrarily excludes from service the members of any race creates such a reasonable likelihood]; *Sheppard v. Maxwell,* 384 U.S. 333, 363, (1966) [pre-trial publicity]; *Estes v. Texas,* 381, U.S. 532 (1965) [televised trials]; *Turner v. Louisiana,* 379 U.S. 466 (1965) [use of deputy sheriffs as both jury custodians and as key prosecution witnesses creates such a reasonable likelihood]; *In re Murchison,* 349 U.S. 133 (1955) [holding contempt trial before the same judges who presided at the grand jury hearing during which the alleged contempt occurred creates such a likelihood]; *Tumey v. Ohio,* 273 U.S. 510 (1927) [system in which judge's compensation depends in part on fines he imposed creates such a likelihood].

The unanimous decision of the California Supreme Court, as the highest tribunal in the California judicial system, that the California Justice Court System is incapable of guaranteeing the accused a fair trial,

must be accorded substantial weight.[18] The decision was well reasoned, based on settled law, and should not be disturbed by review.

II

THE COURT BELOW ANNOUNCED NO NEW DUE PROCESS STANDARD TRANSCENDING CALIFORNIA'S BORDERS BUT INSTEAD APPLIED SETTLED CONSTITUTIONAL DOCTRINE TO THE SPECIFIC CHARACTERISTICS OF THE CALIFORNIA JUSTICE COURT SYSTEM AND FOUND THAT IT FAILED TO PROVIDE A FAIR TRIAL.

A. Petitioners have misread the decision of the California Supreme Court.

In their attempt to persuade this Court that review should be granted, petitioners have overstated both the breadth and reach of the decision of the court below. They imply that the holding of the California Supreme Court transcends California's borders, conflicts with the decisions of its sister states and in some way controls the judicial systems of "35 states" and

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[18]Examples in the record of the constitutional infirmities permitted by the justice court system in California included: (a) Discouraging requests for jury trials because "it just costs too much to give everybody all his rights." (b) The failure to determine and apply the law because "I don't have a law book in the office." (c) The reliance on personal opinions because "I don't know anything more about the law than a hog does about the Fourth of July." (d) The use of courtroom audiences as juries. (e) The retention of racial and ethnic stereotypes: "If a nigger comes in here and doesn't have any money for a $10.00 fine, that doesn't bother me just because he's black. I am not prejudiced. . . . I don't hold anything against the black bastards even though they lie and steal all the time." "Mexican people . . . do not have the mentality level they should have and often it is not just a lack of education. You know that the genes have a considerable effect." (Petition for Alternative Writ of Prohibition and Mandate, paras. 33-37; CT 14-20).

the federal government.[19] This portrayal of the court's decision is not only inaccurate but also demonstrates petitioner's misunderstanding of the court's opinion. The decision of the Supreme Court of California was rooted in and confined to an analysis of the statutory scheme employed in *California's* lay justice court system as well as other variables in the record endemic to California.

B. The decisions relied on by petitioners provide no grounds for granting review.

The thrust of petitioners' argument in favor of granting review is that states other than California continue to allow the use of non-attorney judges. Reliance is placed on *Ditty v. Hampton,* 490 S.W. 2d 772 (1972), *appeal dismissed as moot,* 414 U.S. 885 (1973); *City of Decatur v. Kushmer,* 43 Ill. 2d 334, 253 N.E. 2d 425 (1969); and *Crouch v. Justice of Peace Court,* 7 Ariz. App. 460, 440 P.2d 1000 (1968). Upon closer examination, this position is shown to be without merit.

The characteristics of the judicial systems in our federalist system vary greatly. As noted by petitioner, "This Court has repeatedly held that, under the Fourteenth Amendment, the states are free to establish court systems in accordance with their own conception of policy and fairness so long as fundamental rights are not abridged. *Tumey v. Ohio,* 273 U.S. 510 [1927]; *Snyder v. Commonwealth of Massachusetts,*

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[19] *See* petition for certiorari at 8-10, 12 and 14. For example, the petition states: "Moreover, its [the California Supreme Court's] decision has broad application to current prevailing practice in the majority of states and to the qualifications for United States Magistrates." *Id.* at 12.

291 U.S. 97 [1934]."[20] In reaching its decision herein, the California Supreme Court did not have before it the question of whether the judicial systems of its 49 sister states, with their many various procedures and characteristics, accorded with the requirements of due process of law. Rather the court below was required to determine whether a criminally accused was assured a fair trial within California's justice court framework. The California system was found to contain sufficient risks to the rights of the accused so as to not guarantee a fair trial and due process of law.

The judicial scheme involved in *Ditty v. Hampton*, 490 S.W. 2d 772 (1972), *appeal dismissed as moot*, 414 U.S. 885 (1973),[21] is illustrative by comparison.

The state of Kentucky provides a two-tier procedure whereby an accused first brought before a lay judge is subsequently entitled to an appeal by trial de novo in a superior court before an attorney judge. The Court in *Ditty* specifically noted that "we believe there are strong considerations that would support a holding that even if due process required lawyer judges for courts of general criminal jurisdiction, the requirement would not apply in the Kentucky two-tier system." *Id.* at 776.

In reaching its decision in *Ditty*, the Kentucky Court of Appeals relied on this Court's holding in *Colten v. Kentucky*, 407 U.S. 104 (1972) where the Court noted that Kentucky, *like 24 other states*[22] using

[20] Petition for certiorari at 12.

[21] *See also* North v. Kentucky, October Term 1974 No. ....., *vacated and remanded*, ... U.S. ..... (1974).

[22] "*E.g.*, Ariz. Rev. Stat. Ann. §22-371 et seq. (1956 and Supp. 1971-1972); Ark. Stat. Ann. §44-501 et seq. (1964); Colo. Rule Crim. Proc. 37 (f); Fla. Stat. Ann. §924.41 et seq. (Supp. 1972-1973); Ind. Ann. Stat. §9-713 et seq. (1956 and Supp. 1971) I.C. 1971, 35-1-11-2; Kan. Stat. Ann. §22-3610 et seq. (Supp. 1971);

lay judges, "has a two-tier system for adjudicating less serious criminal cases." *Id.* at 112. Mr. Justice White, writing for the majority in *Colten,* went on to find that although the Kentucky Court of Appeals had found that their "inferior courts *are not designed or equipped to conduct error-free trials, or to insure full recognition of constitutional freedoms, Colten v. Kentucky,* 467 S.W. 2d at 379 (1971)" *Id.* at 117 (emphasis added) these defects were nevertheless cured by the availability of a trial de novo before a judge learned in the law.[23]

Unlike Kentucky's system, the justice court system in California invalidated by the California Supreme Court provides no such trial de novo to cure

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Me. Dist. Ct. Crim. Rule 37 et seq.; Md. Ann. Code, Art. 5 §43 (1968); Mich. Stat. Ann. §28-1226 (Supp. 1972); M.C.L.A. §774.34; Minn. Stat. §§488.20, 633.20 et seq. (1969); Miss. Code Ann. §§1201, 1202 (Supp. 1971); Mo. Sup. Ct. Rule 22 V.A.M.R.; Mont. Rev. Codes Ann. §95-2001 et seq. (1947); Neb. Rev. Stat. §29-601 et seq. (1964); Nev. Rev. Stat. §189.010 et seq. (1969); N.H. Rev. Stat. Ann. §§502.18, 502-A: 11-12 (1968); N.M. Stat. Ann. §36-15-1 et seq. (Supp. 1971); N.C. Gen. Stat. §§15-177 et seq. 20-138 (1956 and Supp. 1971); N.D.Cent. Code §33-12-40 et seq. (1960); Pa. Stat. Ann., Tit. 42 §3001 et seq. (Supp. 1972-1973); Pa. Const. Sched. Art. 5 §16(r)(iii) (Philadelphia) P.S.; Tex. Code Crim. Proc. Arts. 44.17, 45.10 (1966); Va. Code Ann. §16.1-129 et seq. (1950); Wash. Rev. Code §3.50.380 et seq. (Supp. 1971); W. Va. Code Ann. §50-18-1 et seq. (1966 at Supp. 1971)." *Id.* at 112 n.4.

[23] "Such proceedings offer a defendant the opportunity to learn about the prosecution's case and, if he chooses, he need not reveal his own. He may also plead guilty without a trial and promptly secure a trial de novo in a court of general criminal jurisdiction. He cannot, and will not, face the realistic threat of a prison sentence in the inferior court without having the help of counsel, whose advice will also be available in determining whether to seek a new trial, with the slate wiped clean, or accept the penalty imposed by the inferior court. • • • In reality his desires are to accept the decision of the judge and the sentence imposed by the inferior court *or to reject what in effect is no more than an offer in settlement of his case* and seek the judgment of judge or jury in the superior court, with sentence to be determined by the full record made in that court. • • •" Colten v. Kentucky, *supra,* 407 U.S. at 118-119 *as quoted in* Ditty v. Hampton, *supra,* 490 S.W. 2d at 775-776.

errors and protect the constitutional rights of the accused. To the contrary, the appeal procedure was one of the characteristics of California's system upon which the court below predicated its decision:

> Moreover, an appeal from a justice court judgment is particularly inadequate to guarantee a fair trial since justice courts are not courts of record (Cal. const. Art. VI, §1), and thus no transcript is ordinarily made of the original proceeding. If there is no transcript an appeal would be based solely upon a statement of the case settled or prepared by the non-attorney judge himself. *Gordon et al. v. The Justice Court for the Judicial District of Sutter, et al., supra* 12 C. 3d at 332, 15 Cal. Rptr. at 638.

Whether the California Supreme Court would have reached a contrary result if California, like Kentucky and 24 other states, had had a two-tier system is problematical.[24] The point ignored by petitioners is that the lower court's decision is not applicable to Kentucky or to any other state's judicial system[25] but

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[24]Another "serious problem" considered by the court in Ditty and not at issue in California was that "if the county judge and justices of the peace were required to be lawyers, would that not mean that the fiscal court (the county administrative body) which is composed of the county judge and the justices of the peace would have only lawyers as members." Ditty v. Hampton, 490 S.W. 2d 772, 777 (1972).

[25]The judicial systems involved in Crouch v. Justice of the Peace Court, 7 Ariz. App. 460, 440 P.2d 1000 (1968) and City of Decatur v. Kushmer, 43 Ill. 2d 334, 253 N.E. 2d 425 (1969), relied on by petitioners, are equally different from California's system. The court in Crouch, in finding that allowing an Arizona lay judge to instruct a jury did not "shock the universal sense of justice" [Kinsella v. United States ex rel. Singleton, 361 U.S. 234 (1960)] was dealing with a statutory scheme that provides a two-tier system with a right to an appeal by trial de novo, a written transcript, and a more limited misdemeanor jurisdiction than in California. Ariz. Rev. Stat. Ann. §§22-371 and §§22-301. In the Illinois system involved in City of Decatur v. Kushmer, *supra*, 253 N.E. 2d at

instead dealt with the characteristics of California's system as well as the other factors in the *Gordon* record and in light of these circumstances found that a fair trial was not guaranteed.

III

THE CASE OR CONTROVERSY REQUIREMENT OF ARTICLE III IS LACKING HEREIN AND CERTIORARI MUST THEREFORE BE DENIED.

At an early stage of the proceedings below, respondents Gordon and Arguijo pleaded guilty to lesser charges before attorney judges assigned following a peremptory challenge to lay judge Miller and the resignation of lay judge Dana. Because this case posed a question of "broad public interest that is likely to recur" the Supreme Court of California exercised its "inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot." *Gordon, supra,* 12 Cal. 3d 323, ..., 115 Cal. Rptr. 632, 634, n.1. The authority for the California Supreme Court to render such opinions is well-established. *In re M.,* 3 Cal. 3d 16, 23, 89 Cal. Rptr. 33, 37, 473 P. 2d 737, 742 (1970); *cf.* Witkin, 2 *Cal. Prac.* 2d, Actions, §44, at 920 (1971); *id.*, §42, at 916; *id.*, 5 *Cal. Prac.* 2d, Extraordinary Writs §117, at 3894; *Kirstowsky v. Superior Court,* 143 Cal. App. 2d 745, 749, 300 P. 2d

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428, judges were required to be attorneys, as were magistrates with limited exceptions in certain specified circumstances. Ill. Const. Art. VI, Sec. 12, S.H.A., and Sec. 15; Ill. Rev. Stat. 1967, Ch. 37, par. 160.3. Since the decision of the court, Illinois is one of those states that has revised its judicial system and eliminated the use of laymen altogether. Ill. Const. Art. 6 §11 (1970). *See generally* Booz, Allen & Hamilton, California Unified Trial Court Feasibility Study, *Summary of States Having Undergone Recent Reorganization,* Appendix D.

163, 167 (1956). However, as noted by Mr. Justice Rehnquist in *Richardson v. Ramirez*, ... U.S. ....., ..., 94 S.Ct. 2655, 2662 (1974):

> While the Supreme Court of California may choose to adjudicate a controversy simply because of its public importance, and the desirability of a statewide decision, [this Court is] limited by the case or controversy requirement to adjudication of actual disputes between adverse parties.

Accord DeFunis v. Odegaard, ... U.S. ....., ..., 94 S. Ct. 1704, 1706 (1974) wherein the Court stated:

> The starting point for analysis is the familiar proposition that federal courts are without power to decide questions that cannot affect the rights of the litigants . . . before them. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). The inability of the federal judiciary to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case of controversy. [cases omitted] Although as a matter of Washington State law it appears that this case would be saved from mootness by 'the great public interest in the continuing issues raised by this appeal' * * * (even in cases arising in state courts, the question of mootness is a federal one which a federal court must resolve before it assume jurisdiction). *North Carolina v. Rice, supra*, 404 U.S. [244] at 246, 92 S. Ct. at 404.

See Local No. 8-6, Oil, Chemical and International Union, AFL-CIO et al., v. Missouri, 361 U.S. 363 (1960);[26] *Hall v. Beals*, 369 U.S. 45 (1969).

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[26] "Whatever the practice in the courts of Missouri, the duty of this Court 'is to decide actual controversies . . . and not to give opinions upon moot questions or abstract propositions . . . . To ex-

The Court in *Richardson v. Ramirez,* ..... U.S. ....., 94 S.Ct. 2655 (1974) went on to find, based on a lengthy review of the record in the case, that because the case was a class action resulting in a declaratory judgment, "an actual and acute controversy" between the parties continued to be present.[27] The necessary adversary relationship between the parties, "definite and concrete," *Aetna Life Insurance Co. v. Haworth,* 300 U.S. 227, 240-241 (1937) was found to be provided by the class meeting the requirements of Article III of the Constitution. *United States v. Munsingwear Inc.,* 340 U.S. 36 (1950); *cf. Baker v. Carr,* 369 U.S. 186, 204 (1962); *Flast v. Cohen,* 392 U.S. 83, 101 (1968). Such is not true in the instant case.

Unlike *Ramirez,* (and as in *DeFunis*), this case has never been granted class action status[28] by any of the courts below thereby providing the requisite continuing case or controversy.[29] The trial court made no

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press an opinion upon the merits . . . would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed." *Id.* at 394 (citations omitted).

[27]*Id.* at ....., 94 S.Ct. at 2664 n. 13 *quoting* Nashville, Chattanooga and St. Louis R.Co. v. Wallace, 288 U.S. 249 (1933).

[28]Nor was any declaratory judgment rendered below affecting respondents and resulting from a case or controversy. *Compare* Ramirez, *supra,* ..... U.S. ....., ..., 94 S.Ct. at 2664 n. 13. Rather, the California Supreme Court rendered a "public importance" opinion finding the California Justice Court System invalid.

[29]Roe v. Wade, 410 U.S. 113 (1973) provides no support for petitioners' attempt to find a live case or controversy herein. Respondents herein were successful below and there is therefore no chance whatsoever, however "speculative", Hall v. Beals, 369 U.S. 45, 49 (1969), that Gordon and Arguijo will again be compelled to stand trial before an untrained judge. While there may be "practical consideration" for finding the case not to be moot, these are not acceptable grounds to allow this court to issue an advisory opinion. Richardson v. Ramirez, ... U.S. ....., ..., 94 S.Ct. 2655, 2662 (1974). It should be noted also that the issue herein is not one so "inherently brief" as to necessarily evade review. See North

finding that the requirements of a class action had been met.[30] The Court of Appeal denied petitioners' motion to dismiss as moot based on California's "public interest" doctrine—not because a class action was present.[31] To the contrary, the Court of Appeal in its subsequent opinion specifically declined to "reach the question of whether this is a proper class action".[32] In a like manner, the opinion of the Supreme Court of California makes no finding that the case was maintainable on behalf of a class. As with the Court of Appeal opinion, the case was found not moot because it involved issues of public importance, not because of any class action status.

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v. Kentucky, October Term 1974, *vacated and remanded*, ... U.S. ..... (1974); Ditty v. Hampton, 490 S.W. 2d 772 (1972) *appeal dismissed as moot after death of appellant*, 414 U.S. 885 (1973); *compare* Southern Pacific Terminal Co. v. I.C.C., 219 U.S. 498, 515 (1911); Roe v. Wade, *supra*, 410 U.S. 113, 125 (1973).

Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968), cited by petitioners (petition for certiorari at 5 n.3) is equally inapposite. There, petitioners were not allowed to hold political rallies due to the actions of the respondents pursuant to the decision of the court below. An actual and unresolved dispute continued between the same parties to both sides of the case. Such is not true in the case *sub judice*.

[30]Petitioners' assertion that the trial court reached the class issue is false. (Petition for certiorari at 4.) The trial judge in his opinion below only made passing reference to respondents' class action *allegation* and then went on to sustain petitioners' demurrer without ruling on the issue. Gordon et al. v. Justice Court of Yuba City, et al., Sac. No. 210521 (CT 269 *et seq.*) reprinted in Appendix D of petition for certiorari at 74.

[31]*See* Appendix C-40 of petition for certiorari.

[32]Appendix C-40 n. 1 of petition for certiorari.

Significantly, the three cases cited by the Court of Appeal in explanation of the foregoing statement all denied class action status on the grounds that all members of the alleged class would present separate and diverse issues of fact. Gerhard v. Stephens, 68 Cal. 2d 864, 69 Cal. Rptr. 612, 442 P. 2d 692 (1968); City of Chino v. Superior Court, 255 Cal. App. 2d 747, 63 Cal. Rptr. 532 (1967); Barber v. California Emp. Stab. Com., 130 Cal. App. 2d 7, 278 P. 2d 762 (1954).

Gordon, supra, 12 Cal. 3d at ....., 115 Cal. Rptr. at 634 n.1. No mention whatever of the possible detriment to the alleged class can be found in the court's opinion; in fact the court below made its decision prospective, commencing on February 1, 1975; although if a class had been found to exist, this would have resulted in irreparable injury to class members in violation of constitutionally protected rights. *Cf. Williams v. United States,* 401 U.S. 646, 653 (1971).[33]

In summary, no adversary relationship remains in this case. *Sosna v. Iowa,* ..... U.S. ....., October Term 1974 No. 73-762 (January 14, 1975). The named respondents no longer have any stake, no class has at any stage been found to exist, and no declaratory judgment was rendered involving any concrete case or controversy. *Compare Richardson v. Ramirez,* ..... U.S. ....., ..., 94 S. Ct. 2655, 2662-2664. Instead, the California Supreme Court issued a "public importance" decision, prospective in its application, and not reviewable by this Court. The proper means of proceeding therefore is to deny the petition for certiorari—not to vacate the decision of the Court below. For as Mr. Justice Rehnquist noted in *Ramirez,* while this Court's jurisdiction is grounded in a finding of a case or controversy based on a true adversarial rela-

[33]It should likewise be noted that the curative legislation dealing with justice courts is prospective only and will not take effect until "January 7, 1975" or when the decision in this case becomes "final for all purposes, including any review by the United States Supreme Court, whichever is later." *See* Appendix G—104 of petition for certiorari. Thus the statute has future, not present, impact upon petitioners.

tionship between the parties, "the Supreme Court of California has jurisdiction to adjudicate a controversy simply because of its public importance and the desirability of a statewide decision. . . ." *Richardson v. Ramirez*, ... U.S. ....., ..., 94 S. Ct. 2655, 2662 (1974).

IV

THE DECISION OF THE COURT BELOW RESTED ON AN ADEQUATE STATE GROUND AND REVIEW BY THIS COURT IS THUS UNNECESSARY.

The petitioners have gone to great lengths to show that the court below relied on decisions of this Court in rendering its opinion. Petition for certiorari at pp. 7-8. The petition is silent however with regard to the lower court's reliance on California law and their own prior decisions.

The decision below is based on two specific findings —that California's justice court system contains a reasonable likelihood that a fair trial cannot be obtained, and that the right to counsel includes the right to a judge that can understand counsel. In discussing the requirements of a fair trial and due process—protected both by the California [Article I, § 13 cl. 6] and United States Constitutions [Amendment XIV] —the court relies on both its own determinations as well as those of this Court:

> In determining in advance of trial if a particular procedure or proceeding comports with the demands of due process, the courts have

> sought to ascertain whether in the absence of relief a *reasonable likelihood* exists that a fair trial cannot be had. (*Maine v. Superior Court,* 68 Cal. 2d 375, 66 Cal. Rptr. 724, 438 P. 2d 372; *Frazier v. Superior Court,* 5 Cal. 3d 287, 95 Cal. Rptr. 798, 486 P. 2d 694; *see Sheppard v. Maxwell,* 384 U.S. 333, 363, 86 S. Ct. 1507, 16 L. Ed. 2d 600).

With reference to the right to counsel, the California Constitution, Article I, Section 13 provides: "In criminal prosecutions, *in any court whatever,* the party accused shall have the right * * * to appear and defend in person and with counsel." (Emphasis supplied.) The court below made specific reference to this provision of the California Constitution as well as to its 1965 decision holding it applicable to misdemeanors in rendering its decision:

> Furthermore, defendant's fundamental right to the assistance of counsel is guaranteed to him regardless of the severity of the punishment he faces if convicted. (Cal. Const., art. I § 13; see *Argersinger v. Hamlin, supra,* 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530; *In re Smiley,* 66 Cal. 2d 606, 58 Cal. Rptr. 579, 427 P. 2d 179; *In re Johnson, supra,* 62 Cal. 2d 325, 42 Cal. Rptr. 228, 398 P. 2d 420.) Since our legal system regards denial of counsel as a denial of fundamental fairness, it logically follows that the failure to provide a judge qualified to comprehend and utilize counsel's legal arguments likewise must be considered a denial of due process. *Gordon, supra,* 12 Cal. 3d 323, ..., 115 Cal. Rptr. 632, 638.

The decision of the court below was based on both California and federal law, and on that ground review by this court should not be granted.[34]

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Dated, January 17, 1975.

Respectfully submitted,

ALBERT H. MEYERHOFF,
JAMES E. DENVIR,
BURTON DANZIGER,
JOHN GANT,
California Rural Legal Assistance, Inc.

Attorneys for Respondents.

BURTON D. FRETZ,
Of Counsel.

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[34] "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate—and independent state grounds. . . . Our only power over State judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945).